STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JASMINE PYE, SHAWNDREA PYE, DRESHAWN PYE and LATOYA WASHINGTON, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MELVEANA E. PYE,

Respondent-Appellant,

and

DOUGLAS WASHINGTON and OTIS GIVENS,

Respondents.

UNPUBLISHED
June 19, 2003

No. 241835
Wayne Circuit Court
Family Division
LC No. 01-399583

Before: Griffin, P.J., and Murphy and Jansen, JJ.

PER CURIAM.

Respondent-appellant Melveana Pye (hereinafter 'respondent") appeals as of right from the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(i), (b)(ii), (g), (j), (k)(iii) and (k)(v). We affirm.

Petitioner requested termination of respondent's parental rights to all four children in the original petition. At the adjudicative and dispositional hearings, there was evidence that Dreshawn, who was only a few months old at the time, had sustained severe injuries consistent with shaken baby syndrome. He had fractures of various ages and also excessive fluid build-up around his brain caused by some form of trauma. Although the child had been showing signs that something was medically wrong with him, respondent delayed in seeking medical treatment for him for more than a week.

Although we agree with respondent that she has a constitutionally protected interest in raising her children, that interest does not preclude termination of her parental rights upon a

showing that a statutory ground for termination has been established by clear and convincing evidence.

> A parent's interest in retention of his or her rights "undeniably warrants deference and, absent a powerful countervailing interest, protection." *Stanley v Illinois*, 405 US 645, 651; 92 S Ct 1208; 31 L Ed 2d 551 (1972); *Reist v Bay Circuit Judge*, 396 Mich 326, 341-342; 241 NW2d 55 (1976) (Levin, J). Due to the fundamental nature of this interest, the state bears the burden (imposed by the federal constitution) of proving by clear and convincing evidence that termination of parental rights is warranted. *Santosky v Kramer*, 455 US 745; 102 S Ct 1388; 71 L Ed 2d 599 (1982). [*In re Render*, 145 Mich App 344, 347-348; 377 NW2d 421 (1985).]

Here, we conclude that the trial court properly found that a statutory ground for termination was sufficiently established.

The burden of proof is on the petitioner to prove a statutory ground for termination by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). Only a single statutory ground need be proven in order to terminate parental rights. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Once the court determines that a statutory ground for termination has been proven, it "must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests." *In re Trejo, supra* at 354; MCL 712A.19b(5). This Court reviews a trial court's findings of fact in a parental termination case under the clearly erroneous standard. *In re Trejo, supra* at 356-357. A finding of fact is clearly erroneous when the reviewing court has a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); MCR 5.974(I). Deference must be accorded to the trial court's assessment of the credibility of the witnesses before it. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).

Although the evidence did not conclusively establish that respondent was the person responsible for Dreshawn's physical injuries, the evidence clearly and convincingly showed that, based on respondent's conduct, there was a reasonable likelihood that Dreshawn and the other children would be harmed if returned to her custody. It was clear that respondent either was responsible for Dreshawn's severe injuries or failed to protect him from the two other caretakers. Moreover, the child's injuries were apparent at least a week before respondent sought medical attention for him. Respondent's failure to protect Dreshawn and her delay in seeking medical attention clearly and convincingly indicated that all of the children would be at risk of harm in her custody. *In re Futch*, 144 Mich App 163, 168; 375 NW2d 375 (1984). Therefore, respondent's parental rights were properly terminated under § 19b(3)(j). For the same reasons, we agree that termination was also appropriate under § 19b(3)(g), based on respondent's neglect of Dreshawn's injuries and reasonable likelihood that the children would be at continued risk of neglect in her care.

The trial court determined, however, that it was not proven with any certainty who was responsible for inflicting Dreshawn's injuries. Because the evidence failed to sufficiently show who inflicted the injuries, clear and convincing evidence was lacking to terminate respondent's parental rights under either § 19b(3)(b) or § 19b(3)(k). Those subsections both require evidence

concerning the identity of either the perpetrator of abuse or the person who failed to protect the child from the abuser. While there was evidence pointing to respondent as the person who may have caused Dreshawn's injuries, the trial court's determination that the evidence did not sufficiently identify the perpetrator of the abuse precluded termination under these subsections. Nonetheless, because at least one statutory ground was proven by clear and convincing evidence, reversal is not warranted. *McIntyre, supra*.

We also find no clear error with the trial court's determination that termination of respondent's parental rights would not be contrary to the children's best interests. Considering that Dreshawn will require continued medical attention for the rest of his life and the continued risk of harm that respondent posed to the children, it was appropriate for the trial court to conclude that the children should be placed in a home where they would be safe.

Finally, we reject respondent's argument that termination of her parental rights was improper because petitioner did not make reasonable efforts to reunite her with her children. While petitioner is generally required to make reasonable efforts to rectify the conditions that caused the child's removal from a parent's home by adopting a service plan, MCL 712A.18f(4); *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000), services are not required in all cases. See MCL 712A.18f(1)(b). Indeed, MCR 5.974(D) expressly authorizes a trial court to terminate parental rights at the initial dispositional hearing. See also 42 USC 671(a)(15)(D)(i); MCL 722.638. Considering the facts and circumstances of this case, we cannot say that termination of respondent's parental rights at the initial disposition hearing was not justified.

Affirmed.

/s/ Richard Allen Griffin
/s/ William B. Murphy
/s/ Kathleen Jansen